

**CITY OF TAKOMA PARK, MARYLAND  
(ADOPTED 1/10/05)**

**PRESENTATION, REGULAR MEETING & WORKSESSION  
OF THE CITY COUNCIL**

**Monday, November 22, 2004**

**OFFICIALS PRESENT:**

Mayor Porter	City Manager Matthews
Councilmember Austin-Lane	Deputy City Clerk Carpenter
Councilmember Barry	Community and Gov't.. Liaison Ludlow
Councilmember Elrich	ECD Director Daines
Councilmember Mizeur	Planner Blanchard
Councilmember Seamens	Planner Inerfeld
Councilmember Williams	City Attorney Susan Silber

The City Council convened at 7:33 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

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Closed Session - 11/15/04 - On November 8, 2004, Council voted to convene in Closed Session on November 15, 2004. Moved by Seamens; seconded by Austin-Lane (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams). OFFICIALS PRESENT: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams; STAFF/OTHERS: Matthews, Waters, George, Silber, Robert Cox, Jeryl DePietro. The Council discussed the legal settlement with Knott Construction on claims relating to the Community Center Project, pursuant to Annotated Code of Maryland, State Government Article, Section 10-508(a)(7).

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**COUNCIL COMMENTS**

Mr. Seamens commented on the food assistance provided to the needy by Manna Food Center. He requested that Council schedule a briefing on the program.

Ms. Porter commented on the 60's Dance Party fundraiser held by the Takoma Foundation. She also asked Councilmembers to let the City Manager know if they would like to revisit any of the reduction of expenditure items submitted during the budget process.

[Ms. Austin-Lane arrived at 7:37 p.m.]

Ms. Austin-Lane indicated she has two items, which she has put on the table in the past. Mr. Seamens said he wants to address the Police Department staffing level and workload allocation. He also requested information on the most recent review from the Police Department, conducted under General Order 4-12.

Austin-Lane commented that she attended a hearing in DC Council Chambers about the transport of hazardous materials on rail lines. She noted she commented at the hearing in support of their bill.

## **ADOPTION OF MINUTES - January 20, 2004**

Moved by Williams; seconded by Austin-Lane. Minutes of Tuesday, January 20, 2004 were adopted unanimously.

## **PUBLIC COMMENTS**

Jonathan Reed, Susan Solarz, Christopher Phillips announced the formation of the Hillwood Manor Residents Associations, which includes 96 families in Ward 6. They commented on their concerns and areas of interest.

Rino Aldrighetti, 7213 Central Avenue, commented on a problem with the traffic light at Flower and Carroll, and with the neighborhood watch signs at Garland and Flower. He said he wished to follow up on his previous comments about the community center. He asked if the Council has considered putting out a report on the community center project financing issues and lessons learned; have gyms in the area been inventoried, and is Council free to talk about all the community center funding issues surrounding the settlement on the agenda tonight? He also commented that the Council should put the bond issue on a referendum.

Ms. Matthews described the upcoming mailing to go out prior to the public hearing on bonding (if Council decides to consider bonding). Ms. Porter commented on previous work done by the Citizens Liaison Committee to look at gyms in the area. Ms. Austin-Lane noted she asked that the lessons learned document be produced.

[Councilmember Mizeur arrived at 8:00 p.m.]

Lorraine Pearsall, commented that Historic Takoma would like a venue for providing public comments to the Council with respect to the Montgomery College facilities master plan. They want their comments to be on the record.

## **PRESENTATION**

### **1. Update on the Community Center Construction Project**

Ms. Matthews reported on several change orders which have been resolved favorably. The appraisals of the Piney Branch Road properties and the City lot by the Co-op should be done in mid-December. She reported that she is gathering information on debt in other municipalities.

### **2. Update on the Arts and Humanities Commission Cultural Plan and Presentation of Community Murals Poster.**

Randy Cohen, Chair of the Commission, briefed Council on the cultural planning process, which includes substantial community outreach, including a survey sent to all city households. Mr. Coden then presented posters to the City Council.

Councilmembers thanked Mr. Cohen for the work of the Commission. Ms. Austin-Lane encouraged the Commission to pursue the art walk on Carroll Avenue idea and a holiday art studio tour. Mr. Barry invited the Commission to consult with the City on the pocket park at Holton Lane and New Hampshire Avenue. Mr. Williams said he hopes the Commission is thinking about art for the new community center. Mr. Seamens said he would like to see projects in other neighborhoods in the city. Ms. Mizeur asked the Commission to consider starting a First Night in Takoma Park.

### **3. Montgomery College Facilities Master Plan.**

Community and Government Liaison Ludlow introduced Montgomery College staff present: Clarice Summersall, Jenny Wells, David Capp, John McClain, Andrea Phillippi, et al.

David Capp provided a Power Point presentation on enrollment projections, the King Street Arts Center, new projects completed recently and planned for the future, expansion plans, pedestrian concerns, plans to renovate and demolish buildings, and parking issues.

Ms. Austin-Lane commented on North Takoma's concerns about bus stops, size, noise levels, and frequency of busses. She stress the importance of communication.

Mr. Capp agreed to come to a North Takoma association meeting to discuss these matters and other concerns of the community.

### **4. Resolution re: Settling Claims Concerning Community Center Construction**

City Manager Matthews explained the resolution which concerns a pending claim by James F. Knott Construction Co., concerning time delays and the escalation in material cost claim.

City Attorney Silber noted that this is as of November 10, 2004. We can now move forward without these claims coming back. We are released from claims from subcontractors. We were also able to work out the issue of the amount of profit Knott and his subcontractors can charge. There is now an 8% markup for the subcontractors. There were issues having to do with winter delays. Now there will be no claims against us for time delays due to snow or winter. We will only be responsible for the actual cost of keeping the project going, such as heating of the construction area, but not for delay. This was as much as \$470,000 in claims and we have reduced it to \$230,000. In response to a question from Ms. Porter about why these matters were not incorporated in the contract initially, Ms. Silber said these events were outside the foreseeability of the contractor, architect, or the owner, including the issues of the flood plain and soil conditions. We will be working out some issues with design difficulties with the architect.

In response to questions from Mr. Williams, Ms. Silber noted that staff has been working with Robert Cox, from a construction law firm. We have found him very knowledgeable. He recommends this settlement. Mr. Cox hired a scheduling specialist, an expert to analyze whether the claims for delay were legitimate.

Ms. Austin-Lane asked what can be said about the design matters? Ms. Silber said those discussions are still in a fairly early stage. We've decided to settle with the contractor, leaving to the future whether we will be asking the architect to reimburse us for some of these claims.

Mr. Seamens noted the problems relating to the soil conditions and flood plain, and asked what kind of geophysical studies were done as part of this project? Please provide to Council the dates of geophysical studies, and who the contractor was that performed them. Ms. Matthews agreed to provide this information. Ms. Silber commented that all of this work was done as a subcontract to the architect contract. We're not prepared to tell you much about that tonight.

A motion to adopt the resolution was moved by Austin-Lane; seconded by Elrich

Ms. Austin-Lane commented that this is unpalatable, but said she feels confident based on the briefing Council received last week that they've arrived at the best resolution we can achieve. Mr. Seamens commented that this is a quarter of a million dollars. He hopes this is part of the beginning of getting control of the project. Mr. Barry said he is now more confident that our team of staff and specialists are taking steps to ensure that we know as much as is knowable, and that we have a handle on things we did not in the past.

Seth Grimes, Willow Avenue, commented that he hopes that anything that can be made public from the closed session will be made public. He asked what makes this an interim and not a final settlement? This covers through Nov. 10. What does it not cover? A lot of the issues that gave rise to this claim (soil, flood plain) are still open. What is the profit markup, why wasn't this negotiated before hand? He said he would like additional information provided about the closed session.

Ms. Porter said the issue was whether we would allow the contractor charge the markup on the subcontractors. Ms. Silber noted that we're not done yet. We have five months more of construction. Unknown issues may yet arise.

Mr. Seamens asked if we can publish the minutes of the closed session. Ms. Silber responded that it is always in the Council's prerogative to disclose information that is not confidential. Ms. Matthews noted that some of the documents are public documents, some documents were marked privileged and confidential. A portion of the discussion at the closed session discussed future legal strategies. Mr. Elrich cautioned that Council not disclose too much.

Resolution #2004-56 was unanimously adopted (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**RESOLUTION #2004-56**  
**(Attached)**

**5. First Reading Ordinance Establishing an Emergency Preparedness Committee as a Statutory Committee.**

A motion to accept the ordinance was moved by Williams; seconded by Barry.

The motion carried unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-31**  
**(Attached)**

**6. Single Reading Ordinances Awarding Contracts for Laurel Avenue Construction.**

**A. An Ordinance Authorizing Execution of Contract for Provision of Bollards with Reliance Foundary, Inc. for the Laurel Avenue Section of the Carroll Avenue Streetscape Project (for \$21,745.50).**

Moved by Austin-Lane; seconded by Barry.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-32**  
**(Attached)**

**B. An Ordinance Authorizing Execution of Contract for Construction Services with E&M Asphalt Maintenance, Inc. for the Laurel Avenue Section of the Carroll Avenue Streetscape Project (for \$173,788.80).**

Moved by Elrich; seconded by Barry.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-32A**  
**(Attached)**

**C. An Ordinance Authorizing Execution of Contract for Landscaping Services with Stadler Nurseries for the Laurel Avenue Section of the Carroll Avenue Streetscape Project (for \$12,487.00).**

Moved by Elrich; seconded by Seamens.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-32B**  
**(Attached)**

**7. First Reading Ordinance re: FY05 Budget Amendment No. 1**

Moved by Williams; seconded by Austin-Lane.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-33**  
**(Attached)**

**8. Single Reading Ordinance re: Contract for Rents Analyst.**

Ordinance Authorizing Execution of Contract for Rents Analyst with Comilang and Vargese (for \$25.00 per hour).

Moved by Austin-Lane; seconded by Barry.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-34**  
**(Attached)**

**9. Single Reading Ordinance Awarding Contract for Photocopier Lease.**

Ordinance Awarding a Five-Year Lease Contract with United Business Machines for Canon Copiers (\$2372.00 per month). A competitive bid was not required because it is part of a cooperative purchase agreement.

Moved by Elrich; seconded by Williams.

After brief discussion, the motion was moved adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**ORDINANCE #2004-35  
(Attached)**

**CONSENT AGENDA**

The Consent Agenda was moved by Austin-Lane; seconded by Williams.

The motion was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Barry, Elrich, Mizeur, Seamens, Williams).

**A. Resolution appointing Greg Lebel and Kevin Sturtevant to the Ethics Commission.**

Greg Lebel (term expires September 30, 2006).  
Kevin Sturtevant (term expires September 30, 2006).

**RESOLUTION #2004-57  
(Attached)**

**B. Resolution appointing Gayle Fisher-Stewart and Rajat Sen to the Public Safety Citizens Advisory Committee.**

Gayle Fisher-Stewart (term expires September 30, 2006)  
Rajat Sen (term expires September 30, 2006)

**RESOLUTION #2004-58  
(Attached)**

**C. Resolution appointing Suzanna Banwell to the Safe Roadways Committee.**

Suzanna Banwell (term expires June 30, 2006)

**RESOLUTION #2004-59  
(Attached)**

**D. Resolution Amending Resolution 2004-50 to Appoint a Replacement Member to the Takoma Park Residents' Committee on Tax and Service Duplication Issues.**

Jessica Landman was appointed.

**RESOLUTION #2004-60  
(Attached)**

**BREAK**

Council recessed for a scheduled break at 9:40 p.m. and reconvened at 9:55 p.m. in worksession.

**WORKSESSION**

**Discussion of Proposed Median Fencing in the Median Along New Hampshire Avenue and University Boulevard.**

Rob Inerfeld and Suzanne Ludlow were present for the discussion of the SHA proposal to install a six-foot median fence in the median. Council discussed the issue at length, expressing concern for pedestrian and vehicle safety balanced with aesthetics, appearance, and other public safety issues. Staff was directed to invite SHA to attend a City Council meeting. Council and staff will lobby our state representatives, the municipal liaison to the Governor's Office.

Erwin Mack, Executive Director of the Takoma Langley Crossroads Development Authority, addressed Council at length about the CDA's concerns about the proposed fencing. His group has worked on pedestrian and driver education, with location and condition of transit stops. The fence will make the crossroads area a laughing stock.

Laurie Kelly, member of the Safe Roadways Committee, commented on the fence and her opposition to it.

Catherine Tunis, also spoke in opposition to the proposed fencing, suggesting instead, trees in the medians, education of the population in the area, and a pedestrian overpass.

**12. Discussion of Proposed Amendments to Chapter 6 Housing to Address Electrical Service for Air Condition in Rental Housing.**

Ms. Daines reported on results of the surveys her office has done to gather information about landlords' intentions with respect to air conditioning. She asked how Council wants to proceed.

There was consensus to proceed with the proposed amendment to Chapter 6, Article 4, which would expand a landlord's obligations concerning the provision of air conditioning. After extended Council discussion of how to deal with capital improvement petitions for air conditioning related improvements, Ms. Daines was directed to come back to Council in



December with a proposed options for addressing air conditioning improvements through the rent stabilization ordinance.

## **ADJOURNMENT**

The council adjourned for the evening at 11:07 p.m.